



City of West University Place

A Neighborhood City

CITY COUNCIL

Susan Sample, Mayor
Wayne J. Franklin, Mayor Pro Tem
Bob Higley, Councilmember
Kellye Burke, Councilmember
Mardi Turner, Councilmember

STAFF

M. Christopher Peifer, City Manager
Alan Petrov, City Attorney
Thelma Gilliam, City Secretary

City Council Meeting Agenda

Notice is hereby given of a special and regular meeting of the City Council of West University Place to be held on Monday, January 22, 2018 beginning at 6:00 p.m. in the Municipal Building Council Chambers located at 3800 University Boulevard, West University Place, Texas, for the purpose of considering the following agenda items

Note: All agenda items are subject to action. The City Council reserves the right to meet in a closed session on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

SPECIAL MEETING (6:00 p.m.)

Call to Order

Agenda is as follows:

1. Executive Session

Matters related to consultations with the city attorney regarding pending legal matters.

Recess Special Meeting and Convene Executive Session in Council Conference Room

Notice is hereby given that the City Council will convene into executive session in accordance with the following provisions of Chapter 551 of the Texas Government Code:

Section 551.071 – Consultations with Attorney

2. Close Executive Session and Reconvene Special Meeting in Council Chambers

Take any desired action.

3. Adjourn Special Meeting

REGULAR MEETING (6:30 p.m.)

Call to Order

Pledge of Allegiance

Matters related to the notice of this meeting

Agenda items are as follows:

Call to Order

Pledge of Allegiance

Matters related to the notice of this meeting

4. Public Comments

This is an opportunity for citizens to speak to Council relating to agenda and non-agenda items. If the topic the speaker wishes to address is on the agenda, the speaker can either speak at this time or defer his/her comments until such time the item is discussed. Speakers are advised that comments cannot be received on matters which are the subject of a public hearing once the hearing has been closed. Public comments must be kept relevant to the subject before the Council. The presiding officer shall rule on the relevance of comments. Persons making irrelevant, personal, impertinent, or slanderous remarks may be barred by the presiding officer from further comment before the Council during the meeting. Speakers are required to register in advance and must limit their presentations to three minutes each.

5. Consent Agenda

All Consent Agenda items listed are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Council member requests in which event the item will be removed from the Consent Agenda and considered in its normal sequence on the agenda.

A. City Council Minutes

Approve City Council Minutes of January 8, 2018. *Recommended Action: Approve City Council Special and Regular Meeting Minutes. Ms. Thelma Gilliam, City Secretary*

B. Amendment to the Tree Ordinance

Matters related to amending the Tree Preservation and Protection requirements to allow tree trust plantings in the front and side street yards (setbacks). *Recommended action: Approve ordinance amending the Tree Preservation and Protection requirements to allow tree trust plantings in the front and side street yards (setbacks) on the second and final reading. Mr. Dave Beach, Public Works Director* [see Agenda Memo 5B]

C. Short Term Rentals

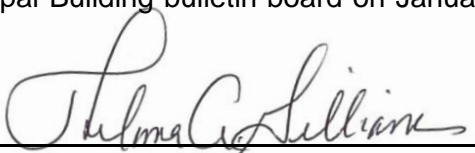
Matters related to ordinance regarding short-term rentals. *Recommended Action: Approve ordinance on the second and final. Mr. Dave Beach, Public Works Director* [see Agenda Memo 5C]

6. Adjourn

In compliance with the Americans with Disabilities Act, if you plan to attend this public meeting and you have a disability that requires special arrangements, please contact City Secretary Thelma Gilliam at 713.662.5813 at least 24 hours prior to the meeting so that reasonable accommodations can be made to assist in your participation in the meeting. The Council Chambers is wheel chair accessible from the west entrance and specially marked parking spaces are available in the southwest parking area. Special seating will be provided.

I certify that the attached notice and agenda of items to be considered by the West University Place City Council on January 22, 2018 was posted on the Municipal Building bulletin board on January 18, 2018 at approximately 4:00 o'clock p.m..

(SEAL)


Thelma A. Gilliam, TRMC, City Secretary



The City of West University Place

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Alan Petrov, City Attorney
Thelma Gilliam, City Secretary

DRAFT

CITY COUNCIL ACTION MINUTES

The City Council of the City of West University Place, Texas, met in regular session on **Monday, January 8, 2018**, in the Municipal Building, 3800 University, West University Place, Texas beginning at approximately **6:30 p.m.**

Agenda items were as follows:

Called Meeting to Order

Mayor Sample called the meeting to order at approximately 6:30 p.m. in the Council Chambers. Council and Staff in attendance were: Councilmembers, Burke, Higley, and Turner, City Manager Peifer, City Attorney Petrov, City Secretary Gilliam, Police Chief Walker, and Public Works Director Beach. Mayor Pro Tem Franklin was absent.

Pledge of Allegiance: Councilmember Higley led the Pledge.

Notice of Meeting: Secretary Gilliam confirmed that the notice of the meeting was duly posted in accordance with the Texas Government Code, Chapter 551.

1. Public Comments

This was an opportunity for citizens to speak to Council relating to agenda and non-agenda items.

Comments were made by:

Alida Drewes, 6112 Fordham Street
Dick Yehle, 6401 Rutgers

2. Amendment to the Tree Ordinance

Matters related to amending the Tree Preservation and Protection requirements to allow tree trust plantings in the front and side street yards (setbacks). *Recommended action: Approve ordinance amending the Tree Preservation and Protection requirements to allow tree trust plantings in the front and side street yards (setbacks) on the first of two readings.* **Mr. Dave Beach, Public Works Director**

Councilmember Higley moved to approve the ordinance amending Chapter 82 of the Code of Ordinances on the first of two readings. Councilmember Turner seconded the motion. **MOTION PASSED.**

Ayes: Sample, Burke, Higley, Turner
Noes: None
Absent: Franklin

3. Short Term Rentals

Matters related to ordinance regarding short-term rentals. *Recommended Action: Approve ordinance on the first of two readings.* **Mr. Dave Beach, Public Works Director**

Councilmember Higley moved to approve the ordinance amending Chapter 54 of the Code of Ordinances on the first of two readings. Councilmember Burke seconded the motion. **MOTION PASSED.**

Ayes: Sample, Burke, Higley, Turner
Noes: None
Absent: Franklin

4. Consent Agenda

All Consent Agenda items listed are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Council member requests in which event the item will be removed from the Consent Agenda and considered in its normal sequence on the agenda.

A. City Council Minutes

Approve City Council Minutes of December 11, 2017. *Recommended Action: Approve City Council Special and Regular Meeting Minutes.* **Ms. Thelma Gilliam, City Secretary**

Councilmember Higley moved to approve the Consent Agenda as presented. Councilmember Turner seconded the motion. **MOTION PASSED.**

Ayes: Sample, Burke, Higley, Turner
Noes: None
Absent: Franklin

5. Adjourn

With no other matters before Council, Councilmember Turner moved to adjourn the meeting at approximately 6:50 p.m. Councilmember Burke seconded the motion. **MOTION PASSED.**

Ayes: Sample, Burke, Higley, Turner
Noes: None
Absent: Franklin

Prepared by: Thelma A. Gilliam, TRMC, City Secretary

Council Approval Date

AGENDA MEMO
BUSINESS OF THE CITY COUNCIL
CITY OF WEST UNIVERSITY PLACE, TEXAS

AGENDA OF:	January 22, 2018	AGENDA ITEM:	5B
DATE SUBMITTED:	January 18, 2018	DEPARTMENT:	Public Works
PREPARED BY:	D. Scarcella, City Planner	PRESENTER:	D. Beach, Public Works Director
SUBJECT:	Amendment to the Tree Ordinance		
ATTACHMENTS:	Ordinance – Chapter 82 Proposed Amendments		
EXPENDITURE REQUIRED:	N/A		
AMOUNT BUDGETED:	N/A		
ACCOUNT NO.:	N/A		
ADDITIONAL APPROPRIATION REQUIRED:	N/A		
ACCOUNT NO.:	N/A		

EXECUTIVE SUMMARY

In an effort to help maintain a diversified and healthy tree canopy throughout the City and to allow property owners the right to develop their property, the City established the Urban Forest Enhancement Fund (Fund). This is a dedicated fund that can only be used for the planting and maintenance of trees, which allows property owners who cannot physically plant all of the required replacement trees due to lack of adequate growth space to pay into this fund for replacement trees to be planted elsewhere in the City.

Currently, trees provided through the Fund can only be planted in the public right-of-way (ROW) for public benefit. On most streets, the ROW is typically between three to eight feet between the curb and sidewalk. These plantings in the ROW while beneficial to the public also pose some operational problems from the City's perspective. These trees can interfere with the height clearance over the streets and sidewalks, obstruct regulatory signage, etc. Lastly, we are having additional problems finding adequate growth area in the ROW.

In an effort to maintain the public benefit, staff reviewed current changes to State regulations which will allow the City to expand the planting areas to the setbacks in the front yard and on corner lots to the side yard setback. This change will open up new areas of the City and allow for additional diversification of the tree canopy which will be better for the long-term health of the trees throughout the City.

The City Attorney has reviewed the amendments and approved it to legal form.

RECOMMENDATION

Staff recommends that City Council approve the ordinance amending Chapter 82 of the Code of Ordinances on the second and final reading.

ORDINANCE NO. XXXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WEST UNIVERSITY PLACE, TEXAS; AMENDING CHAPTER 82, SECTION 82-2, DEFINITIONS, AND SECTION 82-5, REPLACEMENT TREES, OF THE CODE OF ORDINANCES OF THE CITY OF WEST UNIVERSITY PLACE, TEXAS, BY ADDING A DEFINITION OF "FRONT YARD" AND A PROVISION EXPANDING THE LOCATION OF URBAN FOREST ENHANCEMENT FUND PLANTINGS.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST UNIVERSITY PLACE, TEXAS, THAT:

Section 1. Chapter 82, Section 82-2, Definitions, and Section 82-5, Replacement Trees, of the Code of Ordinances of the City of West University Place, Texas are amended by the addition of the definition for "front yard" and the expansion of the allowed location of Urban Forest Enhancement Fund plantings as found in Exhibit "A", attached. All other portions of Chapter 82 of the Code of Ordinances not specifically amended hereby remain in full force and effect.

Section 2. All ordinances and parts of ordinances in conflict with this Ordinance are repealed to the extent of the conflict only.

Section 3. If any word, phrase, clause, sentence, paragraph, section or other part of this Ordinance or the application thereof to any person or circumstance, shall ever be held to be invalid or unconstitutional by any court of competent jurisdiction, neither the remainder of this Ordinance, nor the application of such word, phrase, clause, sentence, paragraph, section or other part of this Ordinance to any other persons or circumstances, shall be affected thereby.

Section 4. The City Council officially finds, determines and declares that a sufficient written notice of the date, hour, place and subject of each meeting at which this Ordinance was discussed, considered or acted upon was given in the manner required by the Texas Open Meetings Act, as amended, and that each such meeting has been open to the public as required by law at all times during such discussion, consideration and action. The City Council ratifies, approves and confirms such notices and the contents and posting thereof.

Section 5. This Ordinance takes effect immediately upon its passage and adoption on second reading.

PASSED, APPROVED AND ADOPTED ON FIRST READING on the ____ day
of _____, 2018.

**PASSED, APPROVED AND ADOPTED ON SECOND READING, AND
SIGNED**, on the ____ day of _____, 2018.

Attest: _____
City Secretary

Signed: _____
Mayor

(Seal)

Recommended:

City Manager

Approved as to legal form:

City Attorney

Exhibit "A"

Amend Section 82-2 and Section 82-5(h)(1) to read as follows:

Sec. 82-2. - Definitions.

Unless the context otherwise clearly requires a different meaning, the following terms, as used in this chapter, shall have the meanings indicated below.

Circumference of a tree means the circumference of its trunk, measured as prescribed in the criteria manual and in figure 1 attached to the criteria manual. For conversion to diameter, the circumference can be divided by 3.142.

Criteria manual means the "criteria manual" dated February 1994, a copy of which is on file in the office of the city secretary, which is hereby approved, adopted and incorporated into this chapter by reference.

Critical root zone means, for any given tree, the area within a circle centered on the trunk location. The circle's diameter is one-half the sum of the broadest and the narrowest drip line diameters. See figure 1b attached to the criteria manual.

Damage a tree means to take any action which could result in a tree's death, either immediately or at any time within two years following the action. Some examples of such action, which are not intended to limit this definition, are as follows: severing the main trunk or large branches or large roots, girdling, poisoning, carving, mutilating, touching with live wires, piercing with nails or spikes, crushing or exposing the roots, digging or drilling any hole larger than three cubic feet (or a trench) within the critical root zone, covering a substantial part of the critical root zone or compacting a substantial part of the soil in the critical root zone.

Driveway visibility triangle means the area within a triangle beginning at the intersection of the edge of a driveway and the inside edge of a sidewalk (i.e., the edge farthest from the roadway). From the intersection point, the first side of the triangle extends five feet inward (away from the roadway) along the edge of the driveway, the second side of the triangle extends five feet along the edge of the sidewalk away from the driveway, and the third side is a straight line connecting the extended ends of the first two sides. If there is no sidewalk, the building official shall designate the probable location of a future sidewalk, which shall then be used as if it were an existing sidewalk. A typical driveway will have two such triangles, one on each side. The visibility triangle may include both public and private property. The building official may prepare example diagrams showing driveway visibility triangles.

Fence-like hedge as used in this chapter has the same meaning defined in appendix A, section 2-102 of the Code (zoning ordinance).

Front yard means the setback area required by the zoning ordinance and measured from the front street side of a building site or potential building site.

Large tree means a tree with a circumference of 19 inches or more. In case a tree is removed, it is presumed to have been a large tree if the diameter of the stump is six inches or greater, measured in any direction.

Located. A tree is "located" within an area if any part of its trunk is within the area at ground level.

Low-value tree means a tree included in "class IV" of the criteria manual (see appendix) which is evaluated by the urban forester under the criteria manual and assigned a total rating less than 30 (out of 40 possible points).

Minimum planting standard means the minimum standard for total number of trees which must be present on a site regardless of the number of pre-existing or replacement trees, as set forth in the criteria manual.

Multiple-trunk tree means a tree with two or more trunks visibly connected above the ground.

Protected tree includes:

(1) A significant tree anywhere in the city; (2) A large tree located within any of the following: a. A front yard; b. A street side yard (of corner sites); or c. A right-of-way area; and (3) When there is a permit in effect for development or pre-development activity on any subject site, "protected tree" includes all large trees located on that subject site.

Qualified tree means any tree listed in Class I or II of the criteria manual which has a trunk diameter of at least two inches, measured six inches above the ground.

Remove means to cut down, or remove a tree by any other means.

Replacement tree means a tree meeting the minimum criteria for replacement trees as set out in the criteria manual and this chapter.

Right-of-way area includes all parts of a street area, including:

(1) The paved or improved roadway; (2) The sidewalks; (3) The curbs or ditches; and (4) All other paved or unpaved areas in the street area. The "right-of-way area" for an individual site includes only the area between the property line of the site and the centerline of the street area (i.e., the directly abutting area in the street area). A corner site has a right-of-way area both in front and on the side.

Significant tree means a large tree with circumference of 36 inches or more. In case a tree is removed, it is presumed to have been a significant tree if the diameter of the stump is 12 inches or greater, measured in any direction (Also see definition of large tree.).

Street gutter flow line means the street gutter flow line of the curb adjacent to and bordering upon a visibility triangle. If there is no curb, the height restrictions set forth in this chapter shall be based upon the actual level of the street area adjacent to and bordering upon the visibility triangle.

Street side yard means the setback area required by the zoning ordinance and measured from the side street line of a building site or a potential building site.

Street visibility triangle means the area at a street corner lying within a triangular area beginning at the intersection point of the curbs of the two streets forming the corner (which will normally be a tangent point on a curved curb-line). Sides of the triangle extend 20 feet along each curb line (away from the intersection point, following any curves in the curb). The third side is a straight line connecting the extended ends of such 20-foot curb-line sides. If there is no curb on such a street, the central flow line of the gutter or ditch is used instead. The triangle may include both public and private property. The building official may prepare example diagrams showing street visibility triangles.

Subject site, for any given development or pre-development activity, includes:

(1) The building site or other site, upon which the development or pre-development activity would occur; plus (2) The right-of-way area for that site.

Tree means a woody plant having one well-defined stem or trunk, a defined crown and a mature height of at least eight feet.

Tree disposition conditions means conditions approved by the urban forester pertaining to the disposition and protection of trees when development or predevelopment activity occurs. See section 82-3.

Tree permit means a valid permit issued by the building official authorizing removal of or damage to a protected tree.

Tree survey is an on-the-ground survey containing the location of trees, their circumferences, types (species), crown areas (drip line) and other data, all as more particularly described in the criteria manual. Unless otherwise indicated in the criteria manual, the tree survey must depict for any given subject site:

(1) Every large tree located in the subject site; and (2) Every large tree located elsewhere which has 30 percent or more of its critical root zone in such subject site.

Tree trust means any person or entity which meets all of the following criteria:

(1) It is operated on a profit-making or not-for-profit basis; (2) The urban forester has determined that it has the resources, organization and expertise to plant and maintain trees successfully in an urban setting and in compliance with certificates issued to the city; and (3) The urban forester's determination has not been revoked or suspended.

Urban Forest Enhancement Fund or "UFEF" means the fund established as such by this chapter.

Urban forester means a person so designated and acting under this chapter.

Visibility area includes a street visibility triangle and a driveway visibility triangle.

Visibility triangle includes a street visibility triangle and a driveway visibility triangle.

(Code 2003, § 22.002; Ord. No. 1772, app. A, 8-16-2004; Ord. No. 1925, § 1(Exh. A), 8-9-2010)

Sec. 82-5. - Replacement trees.

(a) Number of replacement trees. Tree disposition conditions and tree permits authorizing removal of or damage to large trees or protected trees shall normally require replacement by one or more newly-planted trees on the same subject site according to the "replacement inch" stipulations in the criteria manual. To the extent on-site replacement is not feasible, the permittee may choose to:

- (1) Plant and maintain off-site replacement trees within 1,000-feet of the subject site, subject to the provisions of the criteria manual;
- (2) Provide a replacement-inch certificate from a tree trust or the UFEF, as provided in this section and the criteria manual; or
- (3) Provide replacement inches by some combination of the foregoing methods.

Regardless of the method or methods chosen, the number of replacement inches planted on the subject site, plus those provided by alternate methods, must equal or exceed the number calculated according to the replacement inch stipulations in the criteria manual.

(b) Minimum size; species; diversity. Replacement trees must normally have a trunk diameter of at least two inches measured six inches from the ground. If ten inches or more of replacement inches are required by a permit, one replacement tree for each ten inches must have a trunk diameter of at least four inches, measured six inches from the ground. Example: If 24 replacement inches are required, there must be at least two replacement trees with a trunk diameter of four inches or more. The urban forester may prescribe proportionally smaller trunk diameters for species of trees typically smaller than normal. Replacement trees must be class I or class II, according to the list in the criteria manual. However, on each subject site, trees must be selected and planted to achieve diversity, so that no more than 30 percent of the trees on the site belong to any single genus. Exception: If necessary to achieve a matched or paired planting, two trees may belong to the same genus.

(c) Qualified trees under zoning ordinance. To be a "qualified tree" under the zoning ordinance, a tree must comply with the definition of "qualified tree" set out in section 82-2, and must meet the same criteria as replacement trees.

(d) Growth space, etc. Each replacement tree and qualified tree must be planted in a growth space which:

- (1) Contains at least 200 square feet, contiguous, with no dimension smaller than ten feet;
- (2) Can absorb at least three inches of water per hour (over the whole area);

- (3) Does not contain any compacted, stabilized, paved or solid material, at any level; and
- (4) Otherwise supports tree establishment and growth.

Grout-free stones or pavers are not prohibited in a growth space, if the space meets all such criteria. No more than one shade tree may be planted per 200 square feet of such growth space. The urban forester shall use reasonable best efforts to determine the type and number of trees and growth space in an attempt to minimize any undue burden resulting from this chapter.

(d) Standard of review. The urban forester shall use reasonable best efforts to determine the type and number of replacement trees required in an attempt to minimize any undue burden resulting from this chapter.

(e) Trees in street areas. Before authorizing the establishment or maintenance of a tree or decorative landscaping (or any related appurtenances such as lighting or a watering system) in a street area, the building official must:

- (1) Be satisfied that V.T.C.A., Transportation Code ch. 316 has been complied with; and
- (2) Determine there would be no violation of the provisions of this chapter relating to visibility triangles.

The building official is designated by the city council to make the determinations contemplated by V.T.C.A., Transportation Code § 316.003.

(f) Replacement inch certificates. If a tree trust or the UFEF issues an effective "replacement inch" certificate to the city, as provided in the criteria manual, the "replacement inches" described in the certificate are treated the same as replacement tree inches actually planted as of the date of the certificate.

(g) Replacement inch credits. An owner of a site in the city who plants a class I or class II tree on that site is eligible to receive a credit for future "replacement inches." The owner may use the credit to offset the number of "replacement inches" assessed for protected trees removed from the same site at any time in the future. Credits are subject to the following:

- (1) Issuance. Credits are only available for trees registered with the urban forester within 30 days following the day they are planted. Registration requires application and proof of planting. The registration form shall specify the size and species of each tree planted and its location on the site.
- (2) Measurement. The number of replacement inches actually credited is determined by the urban forester at the time an offset is requested, based on the health and size of the previously-registered trees and applying the provisions of the criteria manual regarding calculation of replacement inches.
- (3) Transferability. Credits are not transferable to another site but may be claimed by subsequent owners of the same site.

(4) Records. The city is not responsible for keeping registration or other records of credits. A person claiming a credit must present documents to show that the credit is available and applicable.

(h) Urban Forest Enhancement Fund. The urban forest enhancement fund (UFEF) of the city is hereby established. The UFEF is subject to all restrictions on public funds and other funds of the city, including the requirement for annual budgeting. However, money in the UFEF may only be budgeted and spent for the following purposes:

- (1) Purchasing, planting or otherwise providing trees in public spaces, in the front yard of all building sites or in the side street yard of corner building sites in the city;
- (2) Maintaining or otherwise enhancing trees in public spaces in the city; or
- (3) Matters necessary or incidental to the above.

Deposits may be made into the UFEF by gift or other transfer. The director of finance is authorized to accept such deposits on behalf of the city and to issue:

- Acknowledgments in the name of the city; and
- "Replacement inch" certificates as provided in the criteria manual.

AGENDA MEMO
BUSINESS OF THE CITY COUNCIL
CITY OF WEST UNIVERSITY PLACE, TEXAS

AGENDA OF:	January 22, 2018	AGENDA ITEM:	5C
DATE SUBMITTED:	January 18, 2018	DEPARTMENT:	Public Works
PREPARED BY:	D. Beach, Public Works Dir.	PRESENTER:	D. Beach, Public Works Director
SUBJECT:	Short Term Rentals		
ATTACHMENTS:	Ordinance – Chapter 54 Amendments		
EXPENDITURE REQUIRED:	N/A		
AMOUNT BUDGETED:	N/A		
ACCOUNT NO.:	N/A		
ADDITIONAL APPROPRIATION REQUIRED:	N/A		
ACCOUNT NO.:	N/A		

EXECUTIVE SUMMARY

In response to the recent rise in popularity of short-term rentals, staff reviewed the City's Code of Ordinance to determine the City's role and responsibility with this issue. For the most part, the Code of Ordinances (Code) has remained silent on the issue of short term rentals, which has hampered the City's ability to adequately address the issue.

The City has historically been a community of single family residences and its Comprehensive Plan prioritizes residential uses and values. The Texas Legislature in the Texas Tax Code Section 156.001 defined a short term rental of residential property as a business activity, which also subjects the rental to paying Hotel Occupancy Tax.

Staff is proposing changes to the Code that will address this issue and promote orderly and safe use of property. The changes will also minimize the adverse externalities posed on neighbors not generally created by long term rentals due to the nature of temporary and transient guests.

In addition, the proposed changes will make short term rentals of less than 30 days in a residential zone illegal in the City. However, there are provisions to allow short term rentals in a non-residential district which will require payment of a fee, owners names, site plan and floor plan showing rooms to be used and location of available off-street parking, proof of Hotel Occupancy Tax compliance, insurance, as well as, list of regulations governing quiet hours, solid waste collection, etc.

The City Attorney has reviewed the amendments and approved it to legal form.

RECOMMENDATION

Staff recommends that City Council approve the ordinance amending Chapter 54 of the Code of Ordinances on the second and final reading.

ORDINANCE NO. XXXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WEST UNIVERSITY PLACE, TEXAS; AMENDING CHAPTER 54, OF THE CODE OF ORDINANCES OF THE CITY OF WEST UNIVERSITY PLACE, TEXAS, BY ADDING ARTICLE VIII, SHORT TERM RENTALS, TO REGULATE SHORT TERM RENTALS WITHIN THE CITY; CONTAINING FINDINGS AND PROVISIONS RELATING TO THE SUBJECT AND IMPOSING A PENALTY FOR VIOLATIONS.

WHEREAS, the City Council of the City of West University Place, Texas (the “City Council”) seeks to provide for the public health, safety, and welfare of its citizens; and

WHEREAS, the City Council seeks to promote orderly and safe use of property within the City of West University Place, Texas (“City”); and

WHEREAS, the City Council finds that short term rentals pose certain adverse externalities on neighbors not generally created by long term rentals due to the nature of temporary, transient guests; and

WHEREAS, the City Council finds that absentee owners lack the same level of commitment to neighbors and the community as resident owners; and

WHEREAS, the City Council finds that the community has historically been predominantly single family residences; and

WHEREAS, the City’s Comprehensive Plan prioritizes residential uses and values of the City; and

WHEREAS, the City Council believes that regulating short term rentals will assist in protecting and preserving the dignity, sanctity, and quiet enjoyment of low-density, single-family residential neighborhoods, which are the City’s primary land use category; and

WHEREAS, the City Council desires to give City Staff tools to respond promptly to residents’ concerns related to short term rentals; and

WHEREAS, the Texas Legislature has defined the short term rental of residential property as a business activity by inclusion of short term rentals in Texas Tax Code, Section 156.001, making same subject to the Hotel Occupancy Tax; and

WHEREAS, the City Council agrees with the State that short term rentals are business activities, and further that such are not “home occupations”, nor are they non-conforming uses as defined by the City Code; and

WHEREAS, pursuant to Texas Local Government Code Section 211.003 the City has general authority to regulate the location and use of buildings, other structures and land for business, industrial, residential, or other purposes; and

WHEREAS, pursuant to Texas Local Government Code Section 51.001, the City has general authority to adopt an ordinance or regulation that is for the good government, peace or order of the City and is necessary or proper for carrying out a power granted by law to the City; and

WHEREAS, pursuant to Texas Local Government Code Section 217.042, the City has general authority to define and declare what constitutes a nuisance and authorize the summary abatement of the nuisance in any manner considered expedient; and

WHEREAS, the City Council finds that the terms of this ordinance are reasonable, necessary, and proper for the good government of the City of West University Place, Texas.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST UNIVERSITY PLACE, TEXAS, THAT:

Section 1. Chapter 54 of the Code of Ordinances of the City of West University Place, Texas is amended by the addition of a new Article VIII, Short Term Rentals to read as set out in Appendix A, attached hereto. All other portions of Chapter 54 of the Code of Ordinances not specifically amended hereby remain in full force and effect.

Section 2. All ordinances and parts of ordinances in conflict with this Ordinance are repealed to the extent of the conflict only.

Section 3. If any word, phrase, clause, sentence, paragraph, section or other part of this Ordinance or the application thereof to any person or circumstance, shall ever be held to be invalid or unconstitutional by any court of competent jurisdiction, neither the remainder of this Ordinance, nor the application of such word, phrase, clause, sentence, paragraph, section or other part of this Ordinance to any other persons or circumstances, shall be affected thereby.

Section 4. The City Council officially finds, determines and declares that a sufficient written notice of the date, hour, place and subject of each meeting at which this Ordinance was discussed, considered or acted upon was given in the manner required by the Texas Open Meetings Act, as amended, and that each such meeting has been open to the public as required by law at all times during such discussion, consideration and action. The City Council ratifies, approves and confirms such notices and the contents and posting thereof.

Section 5. The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

Section 6. This Ordinance takes effect immediately upon its passage and adoption on second reading.

PASSED, APPROVED AND ADOPTED ON FIRST READING on the ____ day of _____, 2018.

PASSED, APPROVED AND ADOPTED ON SECOND READING, AND SIGNED, on the ____ day of _____, 2018.

Attest: _____
City Secretary

Signed: _____
Mayor

(Seal)

Recommended by:

City Manager

Approved as to legal form:

City Attorney

City of West University Place
Harris County, Texas

Appendix A

(deletions shown by strike-out, additions shown by underline)

Article VIII. – SHORT TERM RENTALS

Sec. 54-201.-Definitions.

In this article:

Non-Residential District means a zoning district within the City that is not a Residential District.

Residential District means a zoning district in the City primarily for residential use, including the following zoning districts: Residential SF-1, Residential SF-2, Residential SF-3, Townhouse District, PDD – TH1, PDD – TH2, PDD – TH3, PDD – TH5, PDD – TH6, PDD – SF1, PDD – SF2, GR-1, and GR-2.

Short Term Rental means the rental of all or part of a residential property to a person who is not a permanent resident, and who does not have the right to use or possess the property for at least thirty (30) consecutive days.

Sleeping Area means a room or other space within a Dwelling designed or used for sleeping, including a bedroom. Tents and Recreational Vehicles shall not be considered a Sleeping Area.

Sec. 54-202.-Confirmation of Zoning Violation.

- (a) Short Term Rentals in the Residential Districts of the City are an unlawful use in those districts as a business or commercial use incompatible with the zoning of the City's Residential Districts.
- (b) Any person subject to enforcement under section 54-204 violating a provision of this section shall be guilty of a misdemeanor, and upon conviction shall be subject to a fine in accordance with the general penalty section 1-7 of the Code of Ordinances of the City.

Sec. 54-203.-Declaring a Nuisance.

- (a) The traffic, parking difficulty, noise, trash, and other aspects of hotel, motel, bed and breakfast and related business activities are not the norm in a residential neighborhood of West University Place, Texas. Those aspects of commercial use are the basis for the separation through zoning of commercial and residential uses. Therefore the City declares Short Term Rentals a nuisance in the Residential Districts, and prohibited in the Residential Districts of the City.
- (b) Any person subject to enforcement under section 54-204 violating a provision of this section shall be guilty of a misdemeanor, and upon conviction shall be subject to a fine in accordance with the general penalty section 1-7 of the Code of Ordinances of the City.

Sec. 54-204.-Persons Subject to Enforcement.

The owner of the property, the tenant and each of his or her guests, the management company, and any partnership, corporate entity acting in those capacities are subject to enforcement of this article.

Sec. 54-205.-Permit Required.

The owner or operator of a Short Term Rental in a Non-Residential District must obtain a Short Term Rental Permit within one-hundred eighty (180) days of the effective date of this Ordinance.

Sec. 54-206.-Short Term Rental Permit Application.

Application for a Short Term Rental Permit shall be in writing on an application form available in the Public Works Department, shall be accompanied by a payment of the fee of \$500 and shall include the following information at a minimum:

- (a) A list of all of the Owners of the short term rental including names, addresses and telephone numbers.
- (b) A sketch or narrative describing the location of the available parking for short term renters.
- (c) A sketch of the floor plan.
- (d) The name, address and 24 hour telephone numbers of a contact person who shall be responsible and authorized to respond to complaints concerning the use of the Short Term Rental.
- (e) Proof of Hotel Occupancy Tax compliance with Chapter 351 of the Tax Code, before the permit is granted.
- (f) Proof of insurance for the property covering Short Term Rentals.
- (g) A statement that the Owner of the Short Term Rental has met and will continue to comply with the standards and other requirements of this article.
- (h) A current email address for the owner or operator, if applicable.
- (i) If the owner/operator has a property management or agent, owner/operator shall provide property management or agent phone number, mailing address and email address.

Sec. 54-207.-Short Term Rental Standards.

- (a) *Occupancy.* The maximum number of persons allowed to reside in a Short Term Rental is two (2) persons per Sleeping Area plus an additional four (4) persons per residence.
- (b) *Parking.* A minimum of two (2) off-street parking spaces shall be provided.
- (c) *Life Safety.*
 - (1) All building and fire related construction shall conform to the City's Building Codes for residential dwellings.
 - (2) A standard 5lb. fire extinguisher shall be properly mounted within seventy-five (75) feet of all portions of the structure of each floor.
 - (3) Every Sleeping Area shall have at least one operable emergency escape or rescue

opening.

(4) An evacuation plan shall be posted conspicuously in each Sleeping Area.

(d) Conduct on Premises.

Each occupant and visitor to a Short Term Rental shall comply with all applicable provisions of the City's Code, including, without limitation: noise and disorderly conduct, litter prohibition, parking, trespassing, and nuisance provisions. All occupants and visitors shall be informed in writing of relevant City's ordinances including, but not limited to, the City's nuisance ordinance by the owner or operator of the Short Term Rental.

(e) Tenant Indoor Notification. The owner or operator shall post in a conspicuous location of the Dwelling the following minimum information:

- (1) Maximum number of occupants.
- (2) Location of off-street parking and other available parking and prohibition of parking on landscaped areas.
- (3) Any quiet hours or noise restrictions
- (4) 24 hour contact person and phone number
- (5) Property cleanliness requirements
- (6) Trash pick-up requirements
- (7) Emergency evacuation routes
- (8) Emergency Numbers
- (9) Notice that failure to conform to this article is a violation of the City's Code and occupant or visitor can be cited.
- (10) Other useful information about the community.

Sec. 54-208.-Short Term Rental Permit Renewal.

A Short Term Rental Permit will be renewed annually through an inspection conducted by the Fire Marshal to verify continued compliance with this article. A renewal of a Short Term Rental Permit will include renewal fee of \$300 payable by the owner or operator before the Permit is renewed.

Sec. 54-209.-Short Term Rental Permit Transferability.

A Short Term Rental Permit is transferable to a new property owner, if the new property owner submits a Short Term Rental Permit application and agrees in writing to comply with the requirements of this Ordinance. A new owner must apply for a Short Term Rental Permit within ninety (90) days from the closing date of the purchase. The new owner must provide a copy of the closing statement with the Short Term Rental Permit application form. Failure of the new property owner to apply for permit within ninety (90) days from the closing date will revoke the Short Term Rental Permit.

Sec. 54-210.-Short Term Rental Permit Appeal.

If an application for a Short Term Rental Permit or renewal is denied, the owner or operator may appeal to the Building and Standards Commission by written notice delivered within thirty (30) days of denial or revocation.

Sec. 54-211.-Inspections.

- (a) Fire Extinguishers. The owner or operator is responsible for obtaining annual independent inspection of the fire extinguishers in compliance with the City's current Fire Code.
- (b) Immediate Inspection. The City will perform inspection immediately when the City reasonably suspects the Short Term Rental to be in violation of City Codes.
- (c) Annual Fire Inspection. The City's Fire Marshal, or his designee, will perform annual inspections for compliance with this article.

Sec. 54-212.-Enforcement and Penalty.

- (a) Emergency Contact. The owner or operator of the Short Term Rental shall provide the City with a twenty-four (24) hour contact number. Should a law enforcement officer respond to the Short Term Rental and issue a citation for any violation of City Ordinances, the owner or operator shall be called by the officer. The owner or operator shall attempt to contact the occupants within one hour of the call to address the occupants about the complaints. Should a second complaint be filed and citation issued to any part of the occupants or guests, the owner or operator must take appropriate step, in accordance with the individual rental agreement, to assure future complaints do not occur. Should three (3) separate citations be issued to an occupant or their guest(s), or involving separate occupants under separate rental agreements within a six (6) month period, the Short Term Rental Permit may be revoked in accordance with this article.
- (b) Hotel Occupancy Tax. Failure to pay Hotel Occupancy Tax timely is considered a violation of this Section and may result in revocation of the Short Term Rental Permit in accordance this article. Owner shall have thirty (30) days from the date the City or State issue a notice of delinquency to submit delinquent Hotel Occupancy Tax to City and State before revocation of the Short Term Rental Permit begins.
- (c) Permit Renewal. Failure to successfully complete the renewal process of a Short Term Rental Permit is considered a violation of this article. Owner shall have forty-five (45) days from the date City issues notice of denial to gain compliance of noncompliant items before the revocation of the Short Term Rental Permit begins.
- (d) Proof. An advertisement promoting the availability of a Short Term Rental in violation of any City Ordinance or state law requirement is prima facie evidence of a violation and is cause to issue an administrative citation for a violation of this article.
- (e) Offense. It is an offense for the property owner, any agent of the property owner, or the occupant(s) to directly occupy or indirectly allow, permit, cause, or fail to prohibit an occupancy in violation of this article. Each day that a unit is occupied in violation of this article shall be considered a separate offense and subject to a fine in accordance with the general penalty section 1-7 of the Code of Ordinances of the City.

Sec. 54-213.-Revocation.

If any violations stated in section 54-212 have been committed and not corrected within the time specified the Building Official shall begin the procedures to revoke the Short Term Rental Permit in accordance with the following:

- (a) The City shall give thirty (30) day written notice to the owner or operator regarding the public hearing date and decision by the Building and Standards Commission.
- (b) The City shall provide written notice to property owners within two-hundred (200) feet of the subject property at least fifteen (15) days prior to the hearing.
- (c) If a Short Term Rental Permit is revoked, the owner or operator may not reapply for the same property for a period of twelve (12) months.